

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*

Debtors.¹

PROMESA

Title III

Case No. 17-BK-3283-LTS

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO,

as representative of,

PUERTO RICO HIGHWAYS AND
TRANSPORTATION AUTHORITY, *et al.*,

Debtor.

PROMESA

Title III

Case No. 17-BK-3567-LTS

(Jointly Administered)

**URGENT MOTION REQUESTING ORDER (I) APPROVING SERVICE
OF PROCESS AT ADDRESSES LISTED IN DEFENDANTS' PROOFS
OF CLAIMS OR RULE 2019 DISCLOSURES AND (II) APPROVING DEBTORS'
FORM OF NOTICE TO DEFENDANTS IN CERTAIN ADVERSARY PROCEEDINGS**

To The Honorable United States Magistrate Judge Judith Gail Dein:

The Commonwealth of Puerto Rico (the "Commonwealth") and the Puerto Rico Highways

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations.)

and Transportation Authority (“HTA,” and together with the Commonwealth, the “Debtors”), by and through (i) the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as the Commonwealth’s representative pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”),² (ii) the Special Claims Committee (the “SCC”), of the Oversight Board, acting by and through its members, as representative of the Debtors, and (iii) the Committee of Unsecured Creditors of all Title III Debtors (other than COFINA) (the “Committee”, and together with the Commonwealth, HTA, SCC, and Oversight Board, the “Movants”) respectfully submit this urgent joint motion (the “Motion”) for entry of an order (“Order”): (i) confirming that the Movants may effect service by first class mail to defendants in all the Omnibus Lien Challenges (as defined below) at the address(es) listed in their proofs of claim or the addresses listed in verified statements and disclosures (“Rule 2019 Disclosure”) filed pursuant to Rule 2019 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”), and (ii) approving Debtors’ form of notice, attached hereto as **Exhibit B** (“Form of Notice”), informing Defendants, as defined below, of the applicable deadline to respond to the complaints filed in the Omnibus Lien Challenges. In further support of this Motion, Movants respectfully represent as follows:

SUMMARY OF RELIEF REQUESTED

1. As part of the orderly administration of the Commonwealth and HTA Title III cases, the Movants have filed (i) seven (7) adversary proceedings against holders of general obligation bonds issued by the Commonwealth and holders of bonds guaranteed by the Commonwealth (together, “GO Bonds”) that have asserted secured status in the Commonwealth’s Title III Case, seeking a determination of the extent and validity of their asserted liens, and seeking

² PROMESA is codified at 48 U.S.C. §§ 2101-2241.

to avoid certain security interests asserted by these parties (Case Nos. 19-291, 19-292, 19-293, 19-294, 19-295, 19-296, and 19-297, collectively the “GO Lien Challenges”), and (ii) four (4) adversary proceedings against the fiscal agent and certain holders of HTA Bonds seeking a determination of the extent and validity of their asserted liens, and seeking to avoid certain security interests asserted by these parties (Case Nos. 19-362, 19-363, 19-364, and 19-365, collectively the “HTA Lien Challenges,” and together with the GO Lien Challenges, the “Omnibus Lien Challenges”).³ The Omnibus Lien Challenges were filed against 480 defendants in the GO Lien Challenges (“GO Bond Defendants”) and 148 defendants in the HTA Lien Challenges (“HTA Lien Challenges,” and together with the GO Bond Defendants, the “Defendants”). All the Defendants filed either a proof of claim or a Rule 2019 Disclosure or both, which were listed in the complaints in each of the Omnibus Lien Challenges.

2. On June 13, 2019, the Court issued (1) the *Order Regarding Omnibus Motion by Official Committee of Unsecured Creditors, Financial Oversight and Management Board, and its Special Claims Committee to Extend Time for Service of Summonses and Complaints and to Stay Certain Adversary Proceedings Relating to Certain Challenged GO Bonds* [Case No. 17-BK-3283, ECF Nos. 7426]; and (2) the *Order Regarding Omnibus Motion by Official Committee of Unsecured Creditors, Financial Oversight and Management Board, and its Special Claims Committee to Extend Time for Service of Summonses and Complaints and to Stay Certain Adversary Proceedings* [Adv. Nos. 19- 362, 19-363, 19-364, 19-365] Relating to Certain HTA

³ Movants filed eleven Omnibus Lien Challenges to comply with the Court’s *Standing Order Regarding Procedures in Connection with the Commencement of Adversary Proceedings*, Case No. 17-BK-3283-LTS, ECF No. 6530 (the “Adversary Proceeding Standing Order”), entered on April 26, 2019, which provided that “the number of defendants named in any adversary proceeding complaint or cross- or counterclaim that is filed or amended on or after such date must not exceed one hundred (100).” *Id.* at 1.

Bonds (both together, the “Stay Orders”) [Case No. 17-BK-3283, ECF Nos. 7427]. The Stay Orders (1) extend the time for Movants to complete service of the summonses and complaints in the Omnibus Lien Challenges until September 1, 2019, (2) stay until September 1, 2019 the Omnibus Lien Challenges, except to effectuate service of any complaint or third party complaint, (3) delay until thirty days after the stay expires any responsive pleadings to the Omnibus Lien Challenges, (4) order Movants to meet and confer with Defendants served with this Order for the purpose of submitting a proposed joint case management order for the Court’s consideration, (5) mandate a proposed order in connection with the meet and confer to be filed by 12:00 noon A.S.T. on July 17, 2019, and (6) order the status of service and any proposed case management order to be discussed at the Omnibus Hearing scheduled for July 24, 2019 in San Juan, Puerto Rico. *See, e.g.*, Case No. 17-BK-3283, ECF No. 7426 at 2-3.

3. In compliance with the Stay Orders and to assist Movants, the GO Bond Defendants, the HTA Bond Defendants and the Court to efficiently and fairly deal with the Omnibus Lien Challenges, Movants request the Court approve the following two procedural matters:

- a. Confirm that Movants may serve the Defendants by first class mail to the address(es) listed in their proofs of claim and/or to the address(es) listed in their Rule 2019 Disclosure (where applicable) under Bankruptcy Rule 7004 and Fed. R. Civ. P. 4; and
- b. Approve the Form of Notice informing Defendants of the applicable deadline to respond to the Omnibus Lien Challenges in compliance with the Stay Orders.

4. Movants respectfully request that the Court approve these altered procedures for the Omnibus Lien Challenges as the fairest and most efficient method for Movants to prosecute their avoidance actions on behalf of the Commonwealth and HTA.

JURISDICTION AND VENUE

5. The United States District Court for the District of Puerto Rico (the “Court”) has subject matter jurisdiction over this matter pursuant to PROMESA section 306(a).

6. Venue is proper pursuant to PROMESA section 307(a).

7. The statutory predicates for the relief sought herein are section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”), made applicable to this case pursuant to PROMESA section 301(a), Bankruptcy Rule 7004, made applicable to this case by PROMESA section 310, and Rule 4 of the Federal Rules of Civil Procedure, made applicable in relevant part by Bankruptcy Rule 7004.

RELIEF REQUESTED

8. By this Motion, Movants seek the entry of an Order: (i) confirming that service by first class mail to the GO Bond Defendants at the address(es) listed in their proofs of claim or to the address(es) listed in their Rule 2019 Disclosure is proper under Bankruptcy Rule 7004, and (ii) approving the Form of Notice informing Defendants of the applicable deadline to respond to the Omnibus Lien Challenges in compliance with the Stay Orders.

9. Pursuant to Local Rule of Bankruptcy Procedure 9013-1(a)(1), Movants certify that (A) Movants have carefully examined the matter and have concluded there is a true need for urgent relief, (B) Movants have not created the urgency through any lack of due diligence, and (C) Movants cannot, with *bona fide* effort, resolve the matter without a hearing.

BASIS FOR REQUESTED RELIEF

A. The Court Should Confirm That Service at Addresses Listed in Proofs of Claim is Proper Under Bankruptcy Rule 7004

10. Bankruptcy Rule 7004 governs the service of summons in adversary proceedings. Specifically, upon domestic or foreign corporations or upon a partnership or other unincorporated association, service may be made:

by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

F. R. Bankr. P. 7004(b)(3).

11. Similarly, in connection with individuals, Bankruptcy Rule 7004(a)(1) makes Fed. R. Civ. P. 4(e) applicable. Pursuant to Fed. R. Civ. P. 4(e), an individual within a judicial district of the United States may be served by, among other things, “delivering a copy of each [of the summons and of the complaint] to an agent authorized by appointment or by law to receive service of process.”⁴

12. There are 480 GO Bond Defendants and 148 HTA Bond Defendants in the Omnibus Lien Challenges, consisting of corporations, partnerships, other unincorporated associations, and individuals. The Defendants either (1) filed proofs of claim listing an address “[w]here . . . notices to the creditor should be sent,” and/or an additional address listing where “payments to the creditor [should] be sent”; or (2) filed with this Court a Rule 2019 Disclosure listing their address. By filing proofs of claim or Rule 2019 Disclosures listing addresses where

⁴ Service may be made on an individual in a foreign country by, among other things, “other means not prohibited by international agreement, as the court orders.” Fed. R. Civ. P. 4(f)(3) (made applicable by Fed. R. Bankr. P. 7004(a)(1)).

court notices or payments should be sent, the Defendants that filed proofs of claim have held out that service of process is proper at the listed addresses. *See, e.g., In re Village Craftsman, Inc.*, 160 B.R. 740, 745 (Bankr. D.N.J. 1993) (holding that service under Fed. R. Bankr. P. 7004(b)(3) was properly made to P.O. Box defendant listed in its proof of claim as the address to which all notices should be addressed, as defendant “held the address out to be the proper address for service under Bankruptcy Rule 7004(b)(3).”).

13. As a result, the addresses listed in the Defendants’ proofs of claim and/or Rule 2019 Disclosures (as applicable) are proper addresses for service under Bankruptcy Rule 7004. *See, e.g., Takeout, Inc. v. Favour Century Ltd. (In re Takeout, Inc.)*, 2009 Bankr. LEXIS 735, *5-6 (Bankr. S.D.N.Y. Mar. 17, 2009) (“When service of process is effectuated at an address listed in a proof of claim, due process is achieved.”); *Cruisehone, Inc. v. Cruise Ships Catering and Servs. N.V. (In re Cruisehone, Inc.)*, 278 B.R. 325, 332 (Bankr. E.D.N.Y. 2002) (“There is ample authority for the proposition that service of process to the address designated in a proof of claim constitutes proper service under Bankruptcy Rule 7004(b)(3).”); *In re Village Craftsman, Inc.*, 160 B.R. 740, 745 (Bankr. D.N.J. 1993); *In re Outlet Dep’t Stores, Inc.*, 49 B.R. 536, 540 (Bankr. S.D.N.Y. 1985); *Ms. Interpret v. Rawe Druck-und-Veredlungs-GmbH (In re Ms. Interpret)*, 222 B.R. 409, 415 (Bankr. S.D.N.Y. 1998) (“When a party effectuates service at an address listed in a proof of claim, due process is achieved.”) (citing *Teitelbaum v. Equitable Handbag Co. (In re Outlet Dep’t Stores, Inc.)*, 49 B.R. 536, 540 (Bankr. S.D.N.Y. 1985)).

14. As a result, the Movants respectfully request the Court confirm that service under Bankruptcy Rule 7004 can properly be made to the address(es) listed in the Defendants’ proofs of claim and/or in their Rule 2019 Disclosure (where applicable).

B. The Court Should Approve Debtors' Form of Notice Informing Defendants of the Applicable Deadline to Respond to the Omnibus Lien Challenges

15. The Stay Orders extend time for Movants to complete service of summonses and complaints, and stay the Omnibus Lien Challenges until September 1, 2019. Furthermore, the Stay Orders delay the due date for responsive pleadings until thirty (30) days after the stay expires. Nonetheless, the summons form does not contain this information, and without an additional notice Defendants that receive the notice may be unsure of when they have to file any responsive pleadings.

16. As a result, Movants' request the Court approve the Debtors' form of notice attached hereto as **Exhibit 2**, informing Defendants of the applicable deadlines to respond to the Omnibus Lien Challenges.

NO PRIOR REQUEST

17. No prior request for the relief sought in this Motion has been made to this or any other court.

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WHEREFORE Movants respectfully request the Court enter the Order.

Dated: June 25, 2019
San Juan, Puerto Rico

Respectfully submitted,

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/s/ Luis F. del Valle-Emmanuelli

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⁵ See Adv. Proc. Nos. 19-297, 19-362, 19-363, 19-364.

⁶ See Adv. Proc. No. 19-296, 19-365.

⁹ See Adv. Proc. Nos. 19-291, 19-292, 19-293, 19-294, 19-295, 19-362, 19-363.

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⁷ See Adv. Proc. Nos. 19-291, 19-292, 19-293, 19-294, 19-295, 19-296, 19-297, 19-362, 19-363, 19-364, 19-365.

⁸ See Adv. Proc. Nos. 19-297, 19-364.

¹⁰ See Adv. Proc. Nos. 19-291, 19-292, 19-293, 19-294, 19-295.

¹¹ See Adv. Proc. Nos. 19-291, 19-292, 19-293, 19-294, 19-295, 19-296, 19-362, 19-363, 19-365.

Exhibit A

Proposed Order

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*

Debtors.¹

PROMESA
Title III

Case No. 17-BK-3283-LTS

(Jointly Administered)

**ORDER GRANTING DEBTORS' URGENT MOTION REQUESTING
ORDER (I) APPROVING SERVICE OF PROCESS AT ADDRESSES LISTED IN
DEFENDANTS' PROOFS OF CLAIMS AND/OR RULE 2019 DISCLOSURES AND (II)
APPROVING DEBTORS' FORM OF NOTICE IN GO AND HTA LIEN CHALLENGES**

Upon consideration of the *Urgent Motion Requesting Order (I) Approving Service of Process at Addresses Listed in Defendants' Proofs of Claims and/or Rule 2019 Disclosures and (II) Approving Debtors' Form of Notice in GO and HTA Lien Challenges* (the "Motion"),² and the Court having found and determined that: (i) the Court has jurisdiction to consider the Motion and the relief requested therein under PROMESA section 306(a); (ii) venue is proper before this Court pursuant to PROMESA section 307(a); and (iii) the legal and factual bases set forth in the Motion establish just cause for the relief granted herein, it is hereby ORDERED THAT:

1. The Motion is GRANTED.

¹The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations.)

² Capitalized terms used but not defined in this Order shall have the meaning given them in the Motion.

2. The form of notice at Exhibit B of the Motion informing the Defendants of the applicable deadline to respond to the Omnibus Lien Challenge in compliance with the Stay Orders is approved.

3. Debtors may serve the summonses, complaints, the form of notice attached as Exhibit B to the Motion (the “Notice”) and the Stay Orders to Defendants at either the address(es) listed in Defendant’s proof(s) of claim or the address(es) listed in Defendant’s Rule 2019 Disclosure pursuant to Bankruptcy Rule 7004 and Fed. R. Civ. P. 4.

Dated: _____, 2019

Honorable Judith Gail Dein
United States Magistrate Judge

Exhibit B

Form of Notice

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*

Debtors.¹

PROMESA
Title III

Case No. 17-BK-3283-LTS

(Jointly Administered)

**NOTICE OF DEADLINE TO
RESPOND TO THE DEBTORS' GO AND HTA LIEN CHALLENGES**

PLEASE TAKE NOTICE that, on June 13, 2019, this Court has issued the following orders (the “Stay Orders”): (1) *Order Regarding Omnibus Motion by Official Committee of Unsecured Creditors, Financial Oversight and Management Board, and its Special Claims Committee to Extend Time for Service of Summonses and Complaints and to Stay Certain Adversary Proceedings Relating to Certain Challenged GO Bonds*; and (2) *Order Regarding Omnibus Motion by Official Committee of Unsecured Creditors, Financial Oversight and Management Board, and its Special Claims Committee to Extend Time for Service of Summonses and Complaints and to Stay Certain Adversary Proceedings [Adv. Nos. 19- 362, 19-363, 19-364,*

¹The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations.)

19-365] *Relating to Certain HTA Bonds*. A copy of the applicable Stay Order accompanies this Notice.

PLEASE TAKE FURTHER NOTICE that pursuant to the Stay Orders the Omnibus Lien Challenges² are stayed until September 1, 2019, except to effectuate service of any complaint or third party complaint. *See, e.g.*, Case No. 17-BK-3283, ECF No. 7426 at 2. Furthermore, no responsive pleading to the Omnibus Lien Challenges is **due until thirty (30) days** after the stay expires. The Stay Orders supersede any deadlines contained in the enclosed summonses.

PLEASE TAKE FURTHER NOTICE that if you wish to meet and confer with Movants relating to the scheduling and case management of the Omnibus Lien Challenges, please send a notice stating that you wish to meet and confer, and providing your contact details, to:

PROSKAUER ROSE LLP
c/o Chris Tarrant
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PLEASE TAKE FURTHER NOTICE that copies of all documents filed in these Title III cases are available (a) free of charge by visiting <https://cases.primeclerk.com/puertorico> or by calling +1 (844) 822-9231, and (b) on the Court's website at <http://www.prd.uscourts.gov> subject to the procedures and fees set forth therein.

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² Capitalized terms used but not defined in this Notice shall have the meaning given them in the *Urgent Motion Requesting Order (i) Approving Service of Process at Addresses Listed in Defendants' Proofs of Claims and/or Rule 2019 Disclosures and (ii) Approving Debtors' Form of Notice in GO and HTA Lien Challenges* [Case No. 17-BK-3283, ECF No. []].

Dated: [____], 2019
San Juan, Puerto Rico

Respectfully submitted,

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³ See Adv. Proc. Nos. 19-297, 19-362, 19-363, 19-364.

⁴ See Adv. Proc. No. 19-296, 19-365.

⁷ See Adv. Proc. Nos. 19-291, 19-292, 19-293, 19-294, 19-295, 19-362, 19-363.

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⁵ See Adv. Proc. Nos. 19-291, 19-292, 19-293, 19-294, 19-295, 19-296, 19-297, 19-362, 19-363, 19-364, 19-365.

⁶ See Adv. Proc. Nos. 19-297, 19-364.

⁸ See Adv. Proc. Nos. 19-291, 19-292, 19-293, 19-294, 19-295.

⁹ See Adv. Proc. Nos. 19-291, 19-292, 19-293, 19-294, 19-295, 19-296, 19-362, 19-363, 19-365.